TELEBYTE
NORTHWEST
Internet Services

Julie G. Bush, Attorney
Federal Trade Commission
Division of Marketing Practices
600 Pennsylvania Ave., NW
Washington, DC 20580

RE: Comments about a reward or "bounty" system under Section 11(1) of the CAN-SPAM Act

Dear Ms. Bush:

In response to your request the following is herewith provided:

I am President of Telebyte NW Internet Services located in Silverdale Washington. We were the first ISP to open for business in Kitsap County (1994), a county directly west of Seattle, Washington. I am currently President of the Washington Association of Internet Service Providers (WAISP), an office I have held for the past four years. I have been authorized to state that the below comments are approved by the Board of Directors of the Washington Association of Internet Service Providers (WAISP).

As a member of the Board of Directors of the Washington Association of Internet Service Providers (WAISP) I worked closely with our Executive Director and the Washington State Attorney General's office advocating for the Washington State Anti-Spam law. In retrospect, it is my considered opinion that the law has had virtually no affect on the volume of spam being sent, nor on the most egregious and aggressive spammers.

Specifically, the cost of tracking down and suing spammers far outweighs any potential for cost recovery, and is simply not economically feasible for small ISP's or consumers to act. As a consequence, small ISP's are actually being driven out of business because of the burden of the flood of spam now plaguing the internet.

Any "reward" or "recovery" system is predicated on successful prosecution of individual spammers or their "companies." Experience has shown that, just as spammers willfully and cheerfully ignore any rules, contracts or laws regarding spamming, they also have been able to hide their criminal activity behind foreign governments such as China, Korea, Russia and Brazil (by hosting on systems in those countries) and thereby are able to hide their assets from possible seizure (through subterfuge and obfuscation).

The current common technique of spammers is to hijack a computer or computers in the US or Europe, spam millions of addresses, and direct victims to websites hosted in the above countries. China and Korea are two current favorites of spammers, for example.

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Only if a transaction is completed and the money traced is there a chance of tracking down most of the aggressive spammers who account for the majority of the UCE/UBE. I am told by banking industry groups and representatives of major ISP's that even then, we are dealing with layer after layer of "cutouts" that make tracking money very difficult if not impossible for the individual or small ISP with limited resources.

Further complicating matters is the seeming inability of a number of judges to figure out what to do with spammers once they are hauled into court. Because the vast majority of judges simply don't "get it" about the internet and the technology, they often will refuse to hear cases, or will dismiss the suits under constitutional guise. A prime example is the first case filed in Washington State against Jason Heckle. The case was originally thrown out and the law declared unconstitutional. That ruling was overturned by the Washington State Supreme Court. The law was later upheld in Federal Court. It has taken on the order of five years just to get this case adjudicated and the law enforced. Bear in mind that it was the State of Washington prosecuting the case. No small ISP or individual can afford to go to the trouble. Especially considering that Jason Heckle had little or no resources for recovery of the expense of a successful lawsuit.

A "reward" or "bounty" system simply is not sufficient incentive for an individual, ISP, or "bounty hunter" to spend the time, effort, and money to pursue the vastly more skilled and unscrupulous spammers of today. In my opinion it is going to take a concerted and coordinated effort by State and Federal government agencies, large and small ISP's, and the victims of spammers to combat the problem. This should include criminal prosecution and penalties, and private right of action. Also, when spam is sent in violation of an ISP's posted Acceptable Use Policies (AUP), whether or not enforced by the ISP, that fact should be prima facie evidence of criminal spamming.

In summary, it is my opinion that only the credible threat (and imposition) of significant jail time and substantial monetary penalty imposed on perpetrators will significantly reduce the current flood of internet abuse. This will require the active and substantial involvement of law enforcement agencies as part of the solution.

Sincerely,

James H Kendall

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